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Subject:	US Patent Application No. 10 / 651,687 Application of: Kohlman et al. ***"Bag for Home Cleaning Process"*** Docket No.: 2127B	**Date:**	June 13, 2006
Copies:		**Pages:**	18 (including coversheet)

Comments:

Please find as follows—

Petition for Extension of Time (4 months):	1 page
Brief on Appeal:	16 pages

USPTO Customer No. 25280 Case No. 2127B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Randolph S. Kohlman, et al.
Serial Number:	10/651,687
Filed:	August 29, 2003
Title:	**BAG FOR HOME CLEANING PROCESS**
Group Art Unit:	1771
Examiner:	Pierce, Jeremy R.

BRIEF ON APPEAL UNDER 37 CFR 41.37

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal filed on or about December 13, 2005, from the Final Examiner Action dated August 15, 2005. The Appeal Brief is also accompanied by a formal Request for Extension of Time under 37 CFR § 1.136.

I. REAL PARTY IN INTEREST

The above-referenced application is the subject of an assignment to Milliken & Company, located at 920 Milliken Road, Spartanburg, South Carolina, which is the real party in interest.

II. RELATED APPEALS & INTERFERENCES

Appellants are not aware of any other appeal or interference that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-72 have been cancelled. Claims 73-83 stand rejected and are the subject of this Appeal.

IV. STATUS OF AMENDMENTS

No amendment was filed following the Final Office Action.

V. SUMMARY OF INVENTION

The subject application is directed to a textile composite for constructing a bag that is adapted for use in a non-immersion dry cleaning process. The composite is comprised of a textile substrate and a polymer facing. The walls of the bag exhibit given properties, including Kawabata stiffness values within specified ranges and Kawabata surface friction values within specified ranges, that are useful in assisting in the dry cleaning process to which the bag is adapted.

Claim 73 is directed to a textile substrate for constructing an inherently two-dimensional containment bag for use in a non-immersion dry cleaning process, wherein the composite is comprised of a textile substrate and an polymer facing, the composite having specified maximum and minimum average Kawabata stiffness values and the polymer facing having a maximum average Kawabata surface friction value of about 0.35. These features of Claim 73 are described, for example, on Page 23, Lines 16-25.

Claim 74 is directed to the composite of Claim 73 wherein the composite has a more narrowly defined range of minimum and maximum average Kawabata stiffness values, all within the stiffness value range specified in Claim 73. These features of Claim 74 are described, for example, on Page 23, Lines 16-20.

Claim 75 is directed to the composite of Claim 74 wherein the interior surface of the bag constructed from such composite has a specified maximum average Kawabata surface friction

value of about 0.25. These features of Claim 75 are described, for example, on Page 23, Lines 23-25.

Claim 76 is directed to the composite of Claim 73 wherein the composite has a more narrowly defined range of minimum and maximum average Kawabata stiffness values, all within the stiffness value range specified in Claim 73, and wherein the polymer facing has a maximum average Kawabata surface friction value of about 0.35. These features of Claim 76 are described, for example, on Page 23, Line 25.

Claim 77 is directed to the composite of Claim 76 wherein the polymer facing has a maximum average Kawabata surface value of about 0.30. These features of Claim 77 are described, for example, on Page 23, Line 25.

Claim 78 is directed to the composite of Claim 77 wherein the polymer facing has a maximum average Kawabata surface value of about 0.25. These features of Claim 78 are described, for example, on Page 23, Line 25.

Claim 79 is directed to the composite of Claim 73 wherein the substrate is comprised of fibers selected from the group consisting of polyester, nylon, and cotton that form interstices in the substrate into which the polymer facing penetrates. These features of Claim 79 are described, for example, on Page 30, Line 13 and Page 31, Lines 11-14.

Claim 80 is directed to the substrate of Claim 79 wherein the polymer facing forms anchoring structures that extend through the substrate and have diameters that are greater than the diameters of the interstices. These features of Claim 80 are described, for example, on Page 31, Lines 11-14 and Page 32, Lines 225-30.

Claim 81 is directed to the substrate of Claim 79 wherein the substrate is a woven textile comprised of yarns having deniers within the range of 30 to 600 denier. These features of Claim 81 are described, for example, on Page 29, Line 21 and Page 30, Lines 12-13.

Claim 82 is directed to the substrate of Claim 79 wherein the substrate is a warp knitted textile comprised of yarns having deniers within the range of 30 to 600 denier. The features of Claim 82 are found, for example, on Page 29, Line 21 and Page 30, Lines 12-13.

Claim 83 is directed to the substrate of Claim 79 wherein the substrate is a heat-resistant non-woven substrate comprised of yarns having lengths within the range of about 0.5 to about 4.5 inches. The features of Claim 83 are found, for example, on Page 29, Line 21 and Page 30, Lines 12-13.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Claims 73-80 stand rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a), as being obvious over U.S. Patent No. 3,809,573 issued to Feitlowitz.

(B) Claims 73-79 and 81 stand rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a) as being obvious over U.S. Patent No. 5,534,298 issued to Cross et al.

(C) Claims 81 and 82 stand rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 3,809,573 (Feitlowitz) in view of U.S. Patent No. 6,159,877 issued to Scholz et al.

(D) Claim 83 stands rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 3,809,573 (Feitlowitz) in view of U.S. Patent No. 3,889,024 issued to Drelich et al.

VII. ARGUMENT

A. Claims 73-80 stand rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a), as being obvious over U.S. Patent No. 3,809,573 issued to Feitlowitz.

With regard to this rejection, the Examiner argues that Feitlowitz discloses a method for imparting increased stiffness to woven and nonwoven fabrics, which method includes thoroughly impregnating the fabric with a polymeric compositon. The Examiner admits that Feitlowitz does not explicitly teach the limitations of Kawabata stiffness values or Kawabata surface friction values. However, the Examiner asserts that, because similar materials (a textile composition) and similar production steps (impregnating with a stiffening polymer) are employed by Feitlowitz, it is reasonable to presume that said limitations are inherent to the invention. The Examiner then asserts that the burden is upon applicant to prove otherwise, citing *In re Fitzgerald*, 204 USPQ 594.

In the alternative, the Examiner asserts that the presently claimed properties would obviously have been provided by the process disclosed by Feitlowitz since the reference teaches adjusting the stiffness level. The Examiner further notes that, with regard to Claim 79, the textile substrate of Feitlowitz is polyester, and with regard to Claim 80, Feitlowitz teaches the polymer thoroughly impregnates the fabric. The Examiner then assumes that the polymer would form anchoring structures. Therefore, the Examiner concludes that Claims 73-80 should be rejected as being anticipated by, or obvious over, the cited Feitlowitz reference.

Appellants respectfully traverse these rejections. With respect to the assertion of inherency, Appellants believe that fabrics made in accordance with the teachings of Feitlowitz do not meet the limitations of Claims 73-80.

It is Appellants' understanding that the Examiner's obligation in forming the rejection is to establish a *prima facie* case of anticipation or obviousness. This means that, in the absence of contrary evidence provided by the Appellants, the evidence of the prior art must reasonably support the conclusion that the claims are unpatentable. Appellants believe that ample contrary evidence to rebut the *prima facie* case has been provided, for the reasons set forth below.

In the rejection, the Examiner cited *In re Fitzgerald*, 205 USPQ 594 for the proposition that the presently claimed properties would obviously have been present once the Feitlowitz invention is provided. However, it is Appellants' understanding that, to establish inherency, the extrinsic evidence "...must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added).

Specifically, the Examiner asserts that the burden of showing that the claimed properties would not be found in products resulting from the teachings of Feitlowitz has shifted to Appellants. However, in order for the burden to shift, the Examiner must present objective evidence or cogent technical reasoning tending to show that the allegedly inherent characteristics *necessarily* flow from the teachings of the prior art. Appellants respectfully assert that the teachings of Feitlowitz fall far short of providing such support.

Feitlowitz appears to be limited to the application (specifically, the thorough impregnation) of a specific set of stiffening compositions to 100% polyester fabrics. It is open to speculation on the part of the Examiner as to whether the stiffened fabrics of Feitlowitz might have Kawabata stiffness values that fall within the ranges claimed by Appellants. But, as made clear in *In re Robertson*, cited above, as well as numerous other holdings (e.g., *Continental Can Co. U.S.A. v. Monsanto Co.*, 948 F.2d 1264, 20 USPQ2d 1746 (Fed. Cir. 1991), which made clear that "Occasional results are not inherent" and that, to show inherency, the Examiner "...must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill"), such speculation cannot provide the basis for a rejection involving a claim limitation that can only be conjectured to exist in the prior art.

Furthermore, the Examiner apparently has overlooked entirely those portions of the rejected claims that recite a specific Kawabata surface friction value and has provided neither an assertion as to inherency in the prior art or an argument as to why these surface friction value limitations should not be included in performing the requisite consideration of the claim "as a whole."

Appellants respectfully argue that any assertion by the Examiner that the fabrics of Feitlowitz would have exhibited the stiffness and smoothness qualities claimed by Appellants is pure conjecture on the part of the Examiner. Accordingly, Appellants respectfully assert that the Examiner has not met the requirements of the MPEP concerning inherency, and the burden has not shifted. For this reason, Appellants request that the rejection be reversed.

B. Claims 73-79 and 81 stand rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a) as being obvious over U.S. Patent No. 5,534,298 issued to Cross et al.

In making this rejection, the Examiner asserts that Cross et al. disclose a stiff woven fabric with a polymeric coating. As above, the Examiner admits that Cross et al. do not explicitly teach the limitations of Kawabata stiffness values or Kawabata surface friction values. However, the Examiner asserts that, because similar materials (a textile composition) and similar production steps (coating with a stiffening polymer) are employed by Cross et al., it is reasonable to presume that said limitations are inherent to the invention. The Examiner then asserts that the burden is upon applicant to prove otherwise, citing *In re Fitzgerald*, 204 USPQ 594. In the alternative, the Examiner asserts that the presently claimed properties would obviously have been provided by the process disclosed by Cross et al. since the reference teaches adjusting the stiffness level.

Appellants respectfully traverse this rejection. The shortcomings in the Examiner's inherency argument with respect to the teachings of Feitlowitz are discussed above. In considering the teachings of Cross et al. as a basis for complementing and overcoming those shortcomings, Appellants believe Cross et al. is inadequate to provide the Examiner with the requisite *prima facie* case.

It is clear that the process taught by Cross et al. is that of the application of an aerated or foamed latex compound to a fabric in a manner that does not result in the penetration of the compound to the opposite side of the fabric (see Col. 3, Lines 34-36). Appellants are not limited to the use of a specific application method (and, in fact, teach methods other than use of foams), and are keenly interested in both the stiffness and the smoothness of the composite surface, a consideration that appears to be of little or no importance to Cross et al. Accordingly, Appellants believe that, with respect to Cross et al., dissimilar materials and processes are both present, and there is no reason to presume any inherent characteristics to the structures taught by Cross et al, and, particularly, no reason to presume any specific range of surface friction values.

Because Cross et al. fail to teach all of the limitations of Appellants' claims, Appellants believe the rejection is improper and request that it be reversed.

C. Claims 81 and 82 stand rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 3,809,573 (Feitlowitz) in view of U.S. Patent No. 6,159,877 issued to Scholz et al.

The Examiner argues that, while Feitlowitz does not disclose the denier size of the yarn or that the fabric is warp knitted, the teachings of Scholz et al. can be used to provide such teaching. Scholz et al. teach a fabric with a controlled stiffness useful as an orthopedic support material (column 2, lines 45-60). Scholz et al. disclose manufacturing a woven or warp knitted fabric (column 7, line 57—column 8, line 21) with a yarn denier of less than 500 (column 8, lines 35-36). The Examiner contends that it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the fabric disclosed by Scholz et al. in the invention of Feitlowitz in order to provide a fabric material *that is useful as an orthopedic support*, as taught by Scholz et al. (emphasis added).

Appellants respectfully traverse this rejection. Claims 81 and 82 are each dependent from Claims 79 and 73. Appellants believe the shortcomings of Feitlowitz with respect to Claims 79 and 73 have been amply discussed above. The teachings of Scholz et al., which nowhere address the issue of surface friction, can do nothing to address those shortcomings. Appellants wish to make clear that the textile composite claimed by Appellants is not being claimed as an orthopedic support (see above), but rather as a component for an inherently two-dimensional containment bag. Therefore, Appellants are uncertain as to how to address the Examiner's argument with respect to this point.

Aside from a vague recitation of denier (less than 500) by Scholz et al. that falls only partially within the range claimed by Appellants, the combination of Feitlowitz and Scholz et al. are believed to be no more relevant to Claims 81 and 82 than that of Feitlowitz et al. alone. Additionally, Appellants respectfully assert that the Scholz et al. disclosure is directed to fabrics intended for use as orthopedic casting materials, having stiffness characteristics that are adapted to utterly immobilize a flexible body part and therefore far exceed those taught, required, or claimed by Appellants. Appellants therefore believe that there is a total absence of any teaching in Scholz et al. that would lead one of ordinary skill to combine these references, and no indication that, even if combined, the result would meet the cumulative limitations of dependent Claims 81 and 82.

For these reasons, Appellants submit that the rejection of Claims 81 and 82 over the combination of Feitlowitz and Scholz is improper and request that such rejection be reversed.

D. Claim 83 stands rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 3,809,573 (Feitlowitz) in view of U.S. Patent No. 3,889,024 issued to Drelich et al.

The Examiner states that, although Feitlowitz discloses making a nonwoven fabric (column 1, line 45), Feitlowitz does not teach the length of the fibers. But the Examiner observes that Drelich et al. teaches that nonwoven fabrics are conventionally made from fibers having a length between 0.5 and 2.5 inches (column 2, lines 36-40). Therefore, according to the Examiner, absent any specific teaching by Feitlowitz as to the length of the fibers, it would have been both necessary and obvious for a person of ordinary skill in the art to use fibers with a length that is conventional in the art of nonwoven fabrics. The Examiner concludes by stating that Appellants' claimed fiber length range falls within what is conventional in the art for nonwoven fabrics.

Appellants respectfully traverse this rejection. The shortcomings of Feitlowitz with respect to the subject matter of Claim73 and 79, from which the subject matter of Claim 83 cumulatively depends, have been discussed above, and apply here as well. The teachings of Drelich et al. utterly fail to address these shortcomings. Therefore, the combination of Feitlowitz and Drelich et al. are believed to be no more relevant to Claim 83 than that of Feitlowitz et al. alone.

Accordingly, because there is no motivation to combine the references and because the combination of references fails to disclose all of the limitations of Appellants' claims, Appellants submit that the rejection is improper and respectfully request that it be reversed.

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CONCLUSION

For the reasons set forth above, Appellants respectfully urge that the rejections of Claims 73-83 are improper. Reversal of all rejections in this Appeal is hereby requested.

A copy of pending Claims 73-83 is attached hereto.

The Commissioner is hereby authorized to charge the Appeal Brief fee of $500.00 to Deposit Account No. 04-0500. The Commissioner is also authorized to charge any additional fees that may be required, or credit any over-payment, to Deposit Account No. 04-0500.

Respectfully submitted,

June 13, 2006

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VIII. CLAIMS APPENDIX

73. **[previously presented]** A textile composite for constructing an inherently two-dimensional containment bag that, when constructed, has an interior surface and an exterior surface, said bag being suitable for use in a non-immersion dry cleaning process, wherein said composite is comprised of a textile substrate and a polymer facing, said composite having a minimum average Kawabata stiffness value of at least about 0.6 gms (force) cm^2 /cm. and a maximum average Kawabata stiffness value of about 3.0 gms (force) $cm^2/cm.$, and wherein the surface carrying said polymer facing has a maximum average Kawabata surface friction value of about 0.35.

74. **[original]** The composite of Claim 73 wherein said sheet material has a minimum average Kawabata stiffness value of at least about 0.7 gms (force) cm^2 /cm. and a maximum average Kawabata stiffness value of about 2.0 gms (force) cm^2 /cm.

75. **[previously presented]** The composite of Claim 74 wherein the interior surface of said bag, when constructed, has a maximum average Kawabata surface friction value of about 0.25.

76. **[original]** The composite of Claim 73 wherein said sheet material has a minimum average Kawabata stiffness value of at least about 0.8 gms (force) cm^2 /cm. and a maximum average Kawabata stiffness value of about 1.6 gms (force) cm^2 /cm., and wherein the faced surface of said substrate has a maximum average Kawabata surface friction value of about 0.35.

77. **[original]** The composite of Claim 76 wherein said faced surface of said substrate has a maximum average Kawabata surface friction value of about 0.30.

78. **[original]** The composite of Claim 77 wherein said faced surface of said substrate has a maximum average Kawabata surface friction value of about 0.25.

79. **[original]** The textile composite of Claim 73 wherein said textile substrate is comprised of fibers selected from the group consisting of polyester, nylon, and cotton, and wherein said fibers define interstices in said substrate, and wherein said polymer facing penetrates into said interstices.

80. **[original]** The textile substrate of Claim 79 wherein said polymer facing forms anchoring structures that extend through said substrate from the facing side to the opposite side of said substrate, said anchoring structures terminating on said opposite side having diameters that are greater than the diameter of the interstices in said substrate.

81. **[original]** The textile composite of Claim 79 wherein said substrate is a woven textile substrate comprised of yarns having deniers within the range of 30 to 600 denier.

82. **[original]** The textile composite of Claim 79 wherein said substrate is a warp knitted textile substrate comprised of yarns having deniers within the range of 30 to 600 denier.

83. **[original]** The textile composite of Claim 79 wherein said substrate is a heat-resistant non-woven substrate comprised of yarns having lengths within the range of about 0.5 to about 4.5 inches.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

NONE